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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

February 19, 2003

Applicant: Jeff L. Hymer

Art Unit (TC): 2875

Appln./Contr. No.: 09/207,871

Examiner: James W. Cranson, Jr.

Filed: 12/08/1998

For: HIGH SIGNAL LIGHTS FOR AUTOMOTIVE VEHICLES

Assistant Commissioner for Patents
Washington, D.C. 20231

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

APPELLANT'S BRIEF ON APPEAL

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Applicant, Jeff L. Hymer, appeals as follows:

(1) **REAL PARTY IN INTEREST.** The real party in interest is HiLite Systems, L.L.C., a Florida limited liability company, as shown by the records of the U.S. Patent and Trademark Office, Reel 9502, Frame 0411 (Assignment of Parent Application). Applicant holds an equity interest in HiLite Systems, L.L.C. Assignment of this application not filed to date.

(2) **RELATED APPEALS AND INTERFERENCES.** None.

(3) **STATUS OF CLAIMS.** Claims 3-8 are pending. Claims 1 and 2 have been cancelled. Claims 3-8 are appealed.

(4) **STATUS OF AMENDMENTS.** No amendments to claims 3-8 filed after final rejection. However, after final newly added dependent claims 9 and 10, requested entry but entry denied by examiner.

(5) **SUMMARY OF INVENTION.** Briefly, the invention is directed to signal lights for indicating braking and for indicating intended turning in a certain direction. The signal lights can also be used for signaling sudden deceleration of the vehicle and an emergency. Essentially, the invention comprises signal lights for braking and turning located adjacent the uppermost left and right rear corners of a truck or truck trailer, as best shown at 10 and 14 in FIGs. 1 through 4 of the drawings. The signal lights may be in bodies 14, as shown in these figures, or they can be separate lights mounted on, or flush mounted in, the truck body. Applicant's independent claim 3 is directed to the body mount 14, and independent claim 6 is directed more broadly to lights with or without the body 14. On most trucks and truck trailers for which the signal lights are intended, the signal lights will be 13-14 feet above the pavement, thereby enabling the driver of an ordinary automobile to see the lights despite a row of vans, pickup trucks, SUVs, etc. intervening between the driver and the signal lights.

In contrast, large trucks and truck trailers, regardless of overall height, mount the rear signal lights at or below the floor about 3-5 feet above the pavement. Moreover, the signal lights are often near the center of the truck or trailer rear. One van, pickup truck or SUV will block these signal lights from view by any following vehicles.

Although the claims delineate various features of the invention, applicant's invention, as delineated by independent claims 3 and 6, comprises the concept of positioning the rear brake lights and turn signal lights at the highest elevation possible on the truck or trailer, whereby they can be easily viewed by the drivers of a row of shorter vehicles located or approaching serially behind the truck or trailer. Applicant's invention, seemingly very obvious in hindsight, is a vivid example of the amazingly unobvious prior to applicant's invention.

(5a) **HISTORY.** Perhaps some history behind applicant's invention should be detailed in view of the examiner's obviousness rejections of the claims.

Prior to first meeting and engaging the undersigned attorney, the applicant (he is an airline pilot by profession) spent considerable time at the Patent and Trademark Office searching for his invention. In addition, he spent considerable time at the National Highway Traffic Safety Agency (NHTSA) researching for truck accident and safety statistics and for any high mounted brake or turn signal lights. In speaking with individuals at NHTSA, he could not locate any references to his invention or individuals who had knowledge of high mounted brake lights or turn signals.

The applicant then met with, and disclosed his invention to, the undersigned attorney. To be perfectly frank, the undersigned attorney was very surprised that apparently no one had ever published, patented or otherwise publicly used high mounted brake or turn signals on trucks or trailers. The undersigned attorney, despite having grown up in Southeastern Michigan, studied mechanical engineering and law at the University of Michigan in Ann Arbor, Michigan, and practiced patent law for many years in Detroit and Ann Arbor, could not recollect having ever seen high mounted brake or turn signals on trucks or trailers.

Truck trailers and busses have long been equipped with triple small red tail lights at the top rear center and a single small red tail light at each top rear corner. The undersigned can remember these tail lights going back to his childhood some 60 years ago. They must have become standard required lighting prior to World War II. Countless motorists and their passengers have been exposed to the standard required tail lighting, yet it appears that no one has ever put brake lights or turn signals up with the small tail lights prior to applicant.

The applicant has manufactured and sold a quantity of the units depicted in the patent drawings. In use at night, the high mounted brake lights and turn signals are so effective as to be almost startling when first seen.

Including the parent application to the instant application, at least three or four patent examiners have now considered and searched the Patent and Trademark Office records without finding a reference to high mounted brake or turn signal lights that predates applicant's parent application. The best they could find is the Stover patent, cited as the principal reference in the parent application and this application, and the Kelley reference, newly cited in the final rejection of this application.

Applicant's invention appears to truly be a classic case of an invention being literally "in everyone's face" for 60-80 years without anyone realizing, using or patenting the invention prior to applicant. Only once being exposed to applicant's invention does it appear to be almost intuitive (by hindsight). Once having seen the high mounted brake or turn signal in operation at night can only make one wonder why such an important safety feature has not appeared long before now!

(6) ISSUES. The first issue is whether claim 3 is unpatentable under 35 U.S.C. 103(a) over U.S. Patent No. 1,300,893 to Stover, and the second issue is whether claim 6 is unpatentable under 35 U.S.C. 103(a) over U.S. Patent No. 2,486,476 to Kelley. A subissue is whether unentered claims 9 and 10 should be entered and considered as a part of this appeal.

The patentability of claims 4 and 5 depend upon the patentability of claim 3, which they incorporate by reference. The patentability of claims 7-10 depend upon the patentability of claim 6, which they incorporate by reference.

More specifically, firstly, does Stover suggest or make obvious the placement of brake and turn signals at the top rear corners of commercial truck trailers and trucks (typically 13 to 14 feet above the pavement) (claim 3), and secondly, does Kelley likewise suggest or make obvious the placement of brake and turn signals at the top rear corners of commercial truck trailers and trucks (claim 6)?

(7) **GROUPING OF CLAIMS.** Independent claim 3 comprises the first issue above with claims 4 and 5 dependent thereon, as is their patentability. Independent claim 6 comprises the second issue above with the patentability of claims 7-10 dependent on the patentability of claim 6.

(8) **ARGUMENT.**

Claim 3 and its rejection as unpatentable (35 U.S.C. 103(a)) over Stover.

Stover, in the only figure showing a vehicle (FIG. 1), shows a topless roadster of 1916 vintage from the rear with the seat back and steering wheel clearly outlined. The Stover brake light and turn signal device is well below the seat back and steering wheel and obviously three feet or less from the pavement, since it is clearly at the bottom of the fender and at about the floor of the roadster. There is no suggestion of a truck, truck trailer or any other kind of tall commercial vehicle as specified in applicant's claim 3.

In finally rejecting claim 3, the examiner states: "Stover teaches a device for a first relatively tall commercial vehicle for signaling a plurality of other vehicles of much lesser

height following there behind having - -." It defies logic to call the Stover vehicle a "first relatively tall commercial vehicle." Clearly, the Stover brake light and turn signal device is lower than the floor of a large modern truck or truck trailer and makes absolutely no suggestion of mounting the Stover device any higher than the seat backs of the Stover roadster.

Thus, Stover makes no suggestion of mounting the Stover signaling lights high up on the rear corners of a truck or truck trailer where they can be easily seen from a plurality of following automobiles, SUVs, vans and pickup trucks.

Claim 3 distinguishes over Stover by the limitation to a "first relatively tall commercial vehicle" in combination with the limitation to "a plurality of other vehicles of much lesser height following there behind" and further in combination with the limitation at the end of the claim to "said first vehicle having the two bodies mounted adjacent the top thereof at an elevation sufficient for viewing by a plurality of following vehicles arrayed serially behind the first vehicle." Stover clearly makes no suggestion of the positioning of applicant's signaling lights as defined in claim 3.

Claim 6 and its rejection as unpatentable (35 U.S.C. 103(a)) over Kelley.

Kelley, in the only figure showing a vehicle (FIG. 1), shows a 1948 vintage automobile with the Kelley brake light and turn signal device fastened down to the top of the vehicle at about the center of the top both, widthwise and lengthwise. 1948 vintage automobiles were about five to five-and-one-half feet tall, as the undersigned attorney can personally remember. Thus, the Kelley device is no more than about six feet above the pavement.

In finally rejecting claim 6, the examiner states: "Kelley discloses vehicle signaling lights 14 (see figure 1) for signaling change of vehicle speed or direction from a first relatively

tall commercial vehicle to a plurality of other vehicles following there behind having - -." Hereagain, it defies logic to call the Kelley automobile a "first relatively tall commercial vehicle." Being mounted on the roof of an automobile, the Kelley device is located at an elevation above that of the Stover device relative to the pavement. But at about six feet at the very most, the Kelley device will be obscured by only one following van, SUV or pickup truck. Moreover, being on the roof of the automobile, the Kelley device makes no suggestion of mounting the Kelley device any higher.

Thus, Kelley makes no suggestion of mounting the Kelley signaling lights high up on the rear corners of a truck or truck trailer where they can be easily seen from a plurality of following automobiles, SUVs, vans and pickup trucks.

Claim 6 distinguishes over Kelley by the limitations to a "first relatively tall commercial vehicle to a plurality of other vehicles of much lesser height following there behind" in combination with the limitation to "each of said at least one light located at an elevation sufficient for viewing by the plurality of following vehicles arrayed serially behind the first vehicle." Kelley clearly makes no suggestion of the positioning of applicant's signaling lights as defined in claim 6.


Dependent claims 9 and 10 and the refusal of entry in the application.

Claims 9 and 10 specify limitations to a plurality of light emitting diodes set in an array and an array of light emitting diodes mounted on a printed circuit board. These claims substantially parallel claims 4 and 5 as to limitations but incorporate independent claim 6. As such, they raise no issue not already in this appeal, and as noted above, their patentability

depends on the patentability of claim 6. Therefore, there is no substantive reason they should not be entered in this application and considered a part of this appeal.

Respectfully submitted,

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APPENDIX I
CLAIMS

3. A device for a first relatively tall commercial vehicle for signaling to a plurality of other vehicles of much lesser height following there behind comprising

at least two bodies, each body having a base, and a cover joined to the base,

means for attaching each base to the first vehicle, the two bodies being mountable adjacent to the top of the first vehicle and adjacent to each side of the vehicle with the covers facing rearwardly, and

a plurality of translucent lenses in each cover and a plurality of illumination means for illuminating each of said lenses selectably to signal to the plurality of following vehicles, said first vehicle having the two bodies mounted adjacent the top thereof at an elevation sufficient for viewing by a plurality of following vehicles arrayed serially behind the first vehicle.

4. The device of claim 3 wherein said illumination means each comprise a plurality of light emitting diodes set in an array to illuminate at least one lens.

5. The device of claim 4 comprising a printed circuit board positioned between the cover and the base in at least one body, said plurality of light emitting diodes mounted on the printed circuit board.

6. Vehicle signaling lights for signaling change of vehicle speed or direction from a first relatively tall commercial vehicle to a plurality of other vehicles of much lesser height following there behind comprising,

at least one light adjacent the upper right rear corner of the first relatively tall vehicle,

at least one light adjacent the upper left rear corner of the first relatively tall vehicle,

each of said at least one light located at an elevation sufficient for viewing by the plurality of following vehicles arrayed serially behind the first vehicle, and

electric circuitry communicating from first vehicle driver controls to each of said at least one light whereby a first vehicle driver can selectably illuminate each or both of said at least one lights by applying the first vehicle brakes or turn signal switches.

7. The vehicle signaling lights of claim 6 wherein each of said at least one light is a single light combining the function of brake light and turn signal light.

8. The vehicle signaling lights of claim 6 wherein each of said at least one light comprises separately illuminateable brake light and turn signal light.

CLAIMS NOT ENTERED

9. The vehicle signaling lights of claim 6 wherein said at least one light comprises a plurality of light emitting diodes set in an array to illuminate the at least one light.

10. The vehicle signaling lights of claim 9 comprising a printed circuit board having the array of light emitting diodes mounted on the printed circuit board.